

But, the sheriff having relinquished possession of the goods pending the appeal, it was too late to direct an issue; and unless the parties could agree upon one, the proper course would be for the execution creditors to seize again.

King, Q.C., for the execution creditors. *W. R. Riddell*, Q.C., for the claimant. *C. A. Moss*, for the sheriff.

Boyd, C.]

TAYLOR v. ROBINSON.

[Oct. 21

Sale of land—Distribution of proceeds—Priorities—Execution creditors—Solicitor—Charging order—Effect of new Rule of Court.

On Sept. 1, 1897, the Rule was passed by which the Court was enabled to order that land recovered by the exertions of a solicitor should be charged for his benefit: Con. Rule 1129. Prior to this no such power existed as to land. This action was begun by the solicitors for the plaintiffs on the 3rd of June, 1896, and judgment was obtained declaring the plaintiff's right to the land on the 27th October, 1896, but directing a reference for an account, etc. The execution against the plaintiffs for the recovery of the official guardians' costs in another action was issued against their lands and placed in the sheriff's hands on 29th April, 1897, at which time the accounts were being taken in the Master's office. After a year had elapsed, and after a sale could be had under the execution, the Court in this action gave judgment on further directions, on 8th November, 1898, directing a sale of all the lands—the plaintiffs having only a fractional interest therein. A motion being made to restrain a sale under the execution, that was ordered, on account of the larger sale, to be had in this action, after which the rights of all parties to the proceeds were to be adjusted.

Held, that, on this state of facts, the execution bound the plaintiffs' interest in the lands from the 29th April, 1897, at a time when no charge on the lands was possible in favour of the solicitors. The subsequent enactment of the Rule did not operate to divest the charge or to postpone the prior claim of execution creditors to the subsequently acquired equity of the solicitors to the discretionary intervention of the Court. The charge under the execution must precede the solicitors' lien, which was of subsequent origin: See *Goodfellow v. Gray* (1899) 2 Q.B. 498.

After payment to the plaintiffs and of the other charges for commission and disbursements, which would leave a balance of \$758 in Court, the next payment in order would be to the first execution creditor who seized, and whose levy was intercepted by the Court, but without prejudice to his rights. That right of priority for full payment is secured by s. 26 of the Creditors' Relief Act, R.S.O. c. 78.